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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,458	04/01/2004	Randy E. Benway	1213.18584	8394

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EXAMINER
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LUKS, JEREMY AUSTIN

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/816,458

Applicant(s)

BENWAY, RANDY E.

Examiner

Jeremy Luks

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 and 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landis (5,691,514) in view of Yarush (4,850,023).

With respect to Claims 1, 3-10, 13 and 14, Landis discloses a microphone (Figure 2, #14) electronically coupled (36) to a first (32a) and second (32b) speaker, wherein said microphone (14) and speakers (32a, 32b) and a first tube (34) are carried by a hat (16) (Col. 2, Lines 15-16), having a top, a bottom, a front, a left side, a right side and a back, said microphone (14) is adapted to receive sound which approaches the hat (16) from the top, the bottom, the front, the left side, or the right side (Col. 6, Lines 26-36), wherein the speakers (32a, 32b) is positioned proximal to the user's ears when worn; a stereo hearing unit (Figure 2, #38), said stereo hearing unit (38) providing different signals to a right ear and a left ear (Col. 4, Lines 31-40); the speaker apparatus coupled (Figure 4, #36) below a hat (16) brim (Col. 2, Lines 15-16). Landis fails to teach wherein a first tube having a first end is aurally coupled to said first speaker and said first tube second end is coupled to a first ear piece; a mono hearing unit, said mono hearing unit providing identical signals to a right ear and a left ear; and a second microphone. Yarush teaches a first tube (Figure 4, #42) having a first end is aurally

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coupled to said first speaker (40) and said first tube (42) second end is coupled (via 22a) to a first ear piece (Figure 1, #20); and a mono hearing unit (Figure 1, #10), said mono hearing unit (10) providing identical signals to a right ear and a left ear (Col. 3, Lines 33-36); a second tube (18a) having a first end and a second end, wherein said second tube first end is coupled to said first tube (42) and said second tube (18a) second end is coupled to a second ear piece (20); and, a second tube (18a) having a first end and a second end, wherein said second tube first end is aurally coupled to said speaker (40) and said second tube second end is coupled to a second ear piece (20). Further, the Examiner considers that it would have been an obvious matter of design choice to provide a speaker and tubing assembly coupled above or below a hat brim, or on any portion of the hat, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse 86 USPQ 70. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Landis with the apparatus of Yarush to provide a lower cost listening device capable of connecting to a plurality of audio probes which are capable of detecting and transferring sounds from a variety of mechanical devices, while providing a balanced aural sensation to the user. Additionally, the tubes contribute to acoustical filtering and frequency shaping or resonant amplification, which will allow for cheaper microphones, speakers and processing components within the apparatus. Yarush fails to teach a second microphone. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second microphone, since it

has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8

With respect to Claims 11 and 12, Landis teaches a microphone (Figure 2, #14) carried in a microphone-carrying module (12) forwardly disposed (Col. 6, Lines 26-36) on a hat (Col 2, Lines 15-16), and a second tube (34b) and first and second speakers/earphones (32b) carried by a hat (Col 2, Lines 15-16) and positioned proximal to two ears of a wearer of said hat when said hat is worn. Landis fails to teach a speaker coupled to said microphone, said speaker carried by said microphone carrying module; a first length of tubing aurally coupled to said speaker; a tee-fitting coupled to said first length of tubing; a second and a third length of tubing coupled to said tee-fitting; a first and a second earphone coupled to said second and said third respectively; lengths of tubing, said first and said second earphones carried by said hat and positioned proximal to two ears of a wearer of said hat when said hat is worn; said speaker amplifying soft sounds such as voices, and suppressing loud sounds such as shotgun discharges; a second tube having a first end and a second end, wherein said second tube first end is coupled to said first tube and said second tube second end is coupled to a second ear piece and further wherein said second tube is carried by the hat; and a second speaker coupled to a second microphone; and, a second tube having a first end and a second end, wherein said second tube first end is aurally coupled to said second speaker and said second tube second end is coupled to a second ear piece and farther wherein said second speaker and second tube is carried by the hat. Yarush teaches a speaker (Figure 4, #40) coupled to a microphone (38), said speaker

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(40) carried by a microphone carrying module (12); a first length of tubing (42) aurally coupled to said speaker (40); a tee-fitting (22a) coupled to said first length of tubing (42); a second (18a) and a third (18b) length of tubing coupled to tee-fittings (22a, 22b); a first and a second earphone (20) coupled to said second (18a) and said third (18b) lengths of tubing, respectively; said first and said second earphones (20); said speaker (40) amplifying soft sounds such as voices, and suppressing loud sounds (Col. 8, Lines 51-68). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Landis with the apparatus of Yarush to provide a lower cost listening device capable of connecting to a plurality of audio probes which are capable of detecting and transferring sounds from a variety of mechanical devices, while providing a balanced aural sensation to the user. Additionally, the tubes contribute to acoustical filtering and frequency shaping or resonant amplification, which will allow for cheaper microphones, speakers and processing components within the apparatus.

### ***Response to Arguments***

2. Applicant's arguments filed 7/28/06 have been fully considered but they are not persuasive. The Examiner maintains that the obvious combination of Landis and Yarush teaches all of the limitations claimed by Applicant therein. With respect to the argument that neither reference teaches the position of the microphone or microphone carrying device, the Examiner notes the Landis reference, Page 6, Lines 26-36, where Landis notes that the acoustic receiving means, or microphone carrying device may be *forwardly disposed* (Line 36). Further, the Examiner considers that it would have been

an obvious matter of design choice to provide a microphone carrying device rearward, forward, above, below, or on the left or right side of the hat, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse 86 USPQ 70.

### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

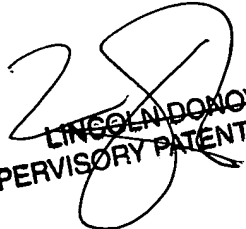
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks  
Patent Examiner  
Art Unit 2837

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER